

GOVERNMENT OF INDIA.

DECENTRALIZATION COMMITTEE

FOR THE

ROYAL COMMISSION

ON

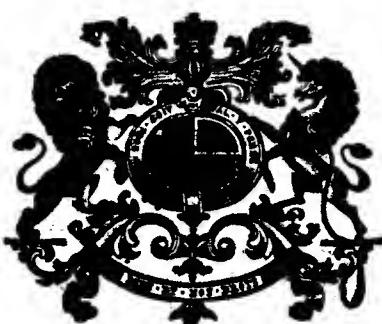
DECENTRALIZATION

MEMORUNDUM ON THE INDIAN PORT
TRUST.

लोकसभा संघर्ष

BY

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Memorandum on the Indian Port Trusts.

The Indian Ports Act.

The administration of the Indian ports is regulated by an Act of the Governor-General in Council, X of 1889. The Act deals with the powers of the Local Governments, the appointment of port officials and their powers and duties. It also lays down rules for the safety of shipping and the conservation of ports, and it provides for the levy of port dues, pilotage fees and other charges.

Powers of Local Governments.

Section 4.

2. The Local Government is empowered—

- (a) to extend or withdraw the provisions of the Act to or from any port;
- (b) to alter the limits of any port;
- (c) to make port rules for carrying out the purposes of the Act.

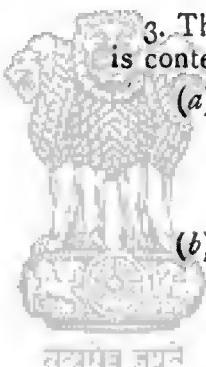
Section 5.

Section 6.

But the exercise of the powers under (a) and (b), and sanitary rules for the prevention of infectious or contagious diseases, are subject to the previous sanction of the Governor General in Council.

Port Officers.

Section 7.



3. The port officials whose appointment is contemplated by the Act are—

- (a) the conservator, who is in all cases the chief port authority, and may be either a single officer or a body of persons;
- (b) the port officer, who is the conservator unless the Local Government issues directions to the contrary;
- (c) the harbour-master, who is the conservator when there is no port-officer, and who is subordinate to the port-officer when there is one;
- (d) the health officer;
- (e) pilots.

Section 17.

Port rates and dues.
Section 33.

Section 35.

Section 36.

The major ports.

4. The Local Government fixes the rates of port dues, subject to maximum rates which are laid down in the Act or are made leviable with the sanction of the Governor General in Council. Pilotage fees require the previous sanction of the Governor General in Council in all cases. The Act provides for the crediting of the port dues, etc., in any one port or group of ports, to a port fund under the control of the Local Government.

5. The Indian Ports Act lays down what may be called the skeleton outlines

of a port organization; it does not attempt to provide machinery adequate for the needs of the six major ports, Calcutta, Madras, Bombay, Karachi, Rangoon and Chittagong, through which the great bulk of the commerce of India is carried on. For each of these ports a separate Act has been passed, usually by the local legislature, providing for the control of the port by a body of Commissioners or Trustees. The organization created is similar in all cases, but there are many variations in points of detail, and in the degree of control exercised by Government over the proceedings of the port authority.

6. In all cases a majority of the Port Trustees are appointed by Government, while the remainder are nominated (a) by the local Chamber of Commerce (at Chittagong they are nominated by mercantile firms selected by the Local Government, with the previous sanction of the Governor General in Council, as representatives of the mercantile community), (b) by the Trades Association at Calcutta, Madras and Rangoon, and by the Municipality at Calcutta and Karachi. In all cases the Chairman is appointed by Government.

7. The various Acts specify in similar terms, but with differences in point of detail, the duties and powers of the Commissioners, particularly as regards the landing and shipping of goods, the provision of docks and wharves and other works required for the port, the imposition of rates and tolls and other charges, the borrowing of funds for the construction of works, the appointment of officers and servants, and the maintenance and audit of the accounts of the Board of Commissioners or Trustees. The extent to which the powers of the Board (for brevity's sake this term will be used throughout) are subject to the control of superior authority will be indicated under each main head.

8. The Board is required to frame from time to time a schedule of the establishment to be maintained by it, and is empowered to frame bye-laws or regulations regarding such matters as the leave and leave allowances, pensions, provident fund and gratuities of its establishment. It is also empowered to appoint and to dismiss and punish its officers and servants. At Rangoon and Chittagong the sanction of Government is specifically required to the schedule of establishment, but not in the other Ports. This difference is, however, more apparent than real, because Government can always control the Board's establishment through the annual estimates of expenditure.

Constitution of the Port Authority.

Powers and duties of the Port Authority.

Officers and servants.

The amount of control exercised by Government over the framing of bye-laws and regulations in matters affecting the staff varies very greatly. In the case of Calcutta all such bye-laws (except those dealing with the establishment of a Provident Fund) require the previous sanction of the Governor-General in Council. At Chittagong bye-laws dealing with pensions and gratuities require the same sanction, but the Board has apparently full powers as regards other subjects; at Madras and Karachi bye-laws dealing with pensions and Provident Funds must be sanctioned by the Local Government; at Rangoon all bye-laws dealing with the establishment must be sanctioned by the Local Government, while at Bombay no sanction is necessary except in the case of particular officers.

At Rangoon and Chittagong the Act itself does not limit the Board's powers of appointment and punishment, but limitations may be prescribed in the bye-laws. At Karachi all orders of appointment, etc., and all bye-laws affecting officers on salaries of more than Rs. 300 a month, must be approved by the Commissioner in Sind. At Calcutta, Madras and Bombay all bye-laws and orders affecting the Secretary, Engineer, Traffic Manager and Chief Accountant must be approved by the Local Government. (In Calcutta this provision applies also to all officers on salaries exceeding Rs. 500 a month).

9. In Madras, Bombay and Karachi the sanction of the Local Government is necessary to the construction of all works the cost of which exceeds Rs. 25,000, Rs. 2,00,000 and Rs. 50,000 respectively. At Calcutta and Rangoon the sanction of the Local Government is necessary when the cost exceeds Rs. 50,000 and that of the Government of India when it exceeds Rs. 2,00,000. At Chittagong the corresponding limits are Rs. 5,000 in the case of the Local Government, and Rs. 10,000 in the case of the Government of India. At Calcutta and Madras contracts for sums exceeding Rs. 50,000 require the sanction of the Local Government, and at Chittagong all contracts for sums exceeding Rs. 10,000 require the same sanction.*

10. The control of the Local Government over the expenditure of the Board is in every case complete. The Budget estimates have to be submitted to the Local Government annually, and the latter may approve, or disallow, or return for amendment the whole estimate or any part of it.

* When these limits were imposed the port of Chittagong was much smaller than it is now.

Sanction to Works.

Control over expenditure.

All supplementary estimates require the same sanction, and the expenditure, not included in the estimates, which the Board may incur in cases of pressing emergency, is strictly limited*. The Board at Rangoon is empowered to make re-appropriations within the total of the sanctioned estimates, but this power is not, apparently, enjoyed by the other Boards. The sanction of the Local Government is also expressly required to the debiting of expenditure to capital. The audit of the accounts is under the control of the Local Government.

11. When the Act creating the Board confers borrowing powers on it, it also specifically requires the sanction both of the Local Government and the Government of India to all loans.† The sanction of the Local Government is sufficient to validate all rates, tolls and other charges levied by the Board.

12. Except in the case of Bombay the general control of Government is comprehensive. In the case of Rangoon and Karachi the law specifically states that all acts and proceedings of the Board are subject to the approval of the Local Government. In all the ports except Bombay the Local Government—

- (a) may order a survey to be made of any work at the expense of the Board;
- (b) may itself carry out any work which has been neglected by the Board;
- (c) may revoke the powers of the Commissioners altogether, and supersede them in the case of continued default.

The last of these powers is, in the case of Rangoon, vested in the Government of India, and in the case of Karachi the approval of the Government of India is necessary to its exercise. In all the ports, except Chittagong if the income of the Board is likely to be insufficient, the Local Government may enforce the increase of the existing rates and charges and the imposition of additional ones. All bye-laws made for the administration of the Port require the sanction of the Local Government.

13. As regards the disposal of immoveable property the degree of control varies. The sale of immoveable property must be sanctioned by the Local Government in the case of every port, and leases of immoveable property for over twenty-one years in Bombay and Karachi, for over ten years in Calcutta, Madras and Rangoon and in all cases in Chittagong, require the same sanction.

Control over borrowing powers and tolls, rates, etc.

General control of Government.

* In most cases the limit prescribed is Rs 5,000.

† At Bombay the consent of the Government of India is only necessary to the manner in which the loan is to be raised.

PART II.

Suggestions for the Commission.

I. The account which has been given of the powers exercised by the various Port authorities and the degree of control to which they are subjected shows that there are great differences in several points. Complete uniformity is not necessarily desirable, but it is a fair presumption (1) that if any power is exercised without objection in one port, it may be similarly exercised in any other port, whose operations are approximately on the same scale, and (2) that when, in the case of certain Provinces, it has not been found necessary to require the previous sanction of the Government of India, to the proceedings of the port authority, this sanction may also be dispensed with in the case of other Provinces.

II. (*Paragraph 8, Part of I.*) (1) So long as Government exercises complete control over the annual estimates of expenditure, it seems unnecessary that the law should specifically require the submission of the schedule of the establishment to the Local Government for sanction. Except in the case of the highest officials of the port.

(2) As regards the bye-laws dealing with the establishments, the sanction of the Local Government need only be retained in the case of bye-laws dealing with pensions and gratuities, and also in the case of all bye-laws affecting the highest officials of the Port, and the sanction of the Government of India should in no case be required. In Bombay even the pension bye-laws are not submitted for sanction, and the liberty at present enjoyed by this Board need not be curtailed.

(3) No change seems to be necessary, so far as the provisions of the law are concerned, in the case of the Boards powers of appointment and punishment.

III. (*Paragraph 9*) (1). It seems unnecessary that the law should require the sanction of the Government of India to the construction of any works. No such restriction exists in the case of Madras and Bombay, and as large works are almost invariably constructed from borrowed funds, and loans must be sanctioned by the Government of India, the general control of the Supreme Government is sufficiently secured. Government will, of course, always have the power, when a contribution is made from general revenues towards the construction of a work or works in any port to impose any conditions it deems necessary, as to the submission of the plans and estimates for sanction.

(2) As regards the sanction of the Local Government, in the case of Calcutta the Board's powers might be increased so as to extend to sanctioning all works not costing more than Rs. 2,00,000 as in Bombay, while in Madras and Karachi the limit might be raised to Rs. 1,00,000, and in Chittagong to Rs. 25,000.

(3) It seems unnecessary that the Board should be required to obtain the approval of Government to contracts whatever their amount.

IV. Whatever limits are now fixed to the financial powers of the Boards may become too narrow as time goes on.

In preference, therefore, to incorporating the specific proposals made above in the substantive law it might be better to empower the Local Government to make rules, subject to such general or special restrictions, if any, as the Government of India may from time to time impose, laying down the limits within which the Board should exercise their powers to create establishment and sanction works. If this were done, the powers could be increased from time to time as might be found necessary.

V. (*Paragraph 10*).—No change is proposed as regards the Local Government's control over the expenditure of the Board, and the debiting of expenditure to Capital, except that the Board should always have power, as at Rangoon, to make reappropriations within the amount of the total sanctioned estimate.

VI. (*Paragraph 11*).—No change is proposed as regards the control of the Government of India and the Local Government over the borrowing powers of the Board.

VII. (*Paragraph 12*).—It is important that Government should reserve complete power of final control, but the power to supersede the Board should, in the case of Rangoon as at other ports, be vested in the Local Government, and in the case of Karachi the approval of the Government of India should not be necessary to its exercise. It is unnecessary to require by law the sanction of the Government of India, for the Board would always be able to appeal to it, and the Supreme Government could then, if necessary, interfere in virtue of its ultimate controlling power.

VIII. (*Paragraph 13*).—As regards the disposal of immoveable property, it would

probably be better that the existing provisions of the law should be repealed, and that the Local Government should be empowered to make rules subject to such general or special restrictions as the Government of India might, from time to time, impose, regulating the disposal of their immoveable property by the Board.

IX. An examination of the correspondence under the heading Port, Port dues and Pilotage suggests that certain powers might be delegated to Local Governments under the Indian Ports Act. The Local Governments should have full powers.

- (1) to extend or withdraw the Act from any port or any part thereof;
- (2) to alter the limits of the port.

Similarly, under the Madras outposts Landing and Shiping Act the Local Government should have full powers to sanction landing and shipping fees.

X. Such amendment of the law as may be considered necessary with reference to these suggestions could be dealt with in a general Decentralization Act, which would specify the sections of particular laws, in which provisions requiring the specific sanction of the Governor General in Council, or of a Local Government, might be omitted or altered.

G. RAINY,—5-11-07.

I submit a Memorandum on Port Trusts which has been prepared by Mr. Rainy and approved by the Decentralization Committee.

2. Part I of this note is our formal statement of facts for the Royal Commission on Decentralization.

Part II contains suggestions for giving larger powers to the Trusts in certain respects ; and if the Commerce and Industry Department consider that these are suitable for discussion by the Commission, I will put them before that body on a suitable opportunity.

W. S. MEYER,—6-11-07.

